Secta. II-27—100,000—21-6-52.

Revenue (1948) Department.

MS SERIES.

G.O. No. 1149

Dated 13/5/48

[Despatch Abstract.]

Stamp Act - Agreement relating to deposit of title deeds with the intent to create security whether to be charged under Article 5 (1) or under Article 33(b) of Schedule I-A of the Act - Instructions - Orders passed.

Back Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
MS	2580	Rev.	7.11.47				

Further Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

of title-deeds and a deposit creating a charge by way of security. Since, very large amounts by way of stamp duty are involved if such cases were to be treated as falling under Article 5 (1) instad of under Article 33(b) of Schedule IA of the Act, the Board considers it desirable to have the opinion of the Advocate General how such documents relating to deposit of title-deeds should be treated for purposes of assessing the stamp-duty payable. The Board requests that Government may be pleased to consult him.

Sd. x x /for Jt.Secretary

To the Secretary to Government,Revenue Department with records as per list to returned.

LIST: 1.B.P.Mis.197 dated 14-2-47. 2.Fort St.George Gazette(1904) 3.B.P.Rt.4252 dated 9-9-44. 4.B.P.Mis.853 dt.22-7-43.

GOVERNMENT OF MADRAS

Abstract.

Stamp Act - Agreement relating to deposit of title deeds with the intent to create security whether to be charged under Article 5(1) or under Article 33(b) of Schedule IA of the Act -Instructions - Orders passed.

G.O.Ms.No.1149, Revenue Department dated 13-5-1948.

READ:- From the Board of Revenue, Ref.No.1-4039/47-3,dt.23-1-48.

ORDER:

In its Reference read above, the Board of Revenue has raised the question whether a memorandum of deposit of title deeds executed with intent to create an equitable charge falls under Article 5(1) or Article 33(b) of Schedule 1-A of the Indian Stamp Act and has cited document No.P.63. of 1947 of the Registrar's office, Madras-Chingleput as a concrete case.

2. If a customer goes to a Bank in the City of Madras and deposits with it his title deeds to some immovable property and borrows money on the strength of that deposit, in other words, when the deposit is made with intent to create a security thereon, a mortgage comes into existence under section 58(f) of the Transfer of Property Act and no writing whatsoever is necessary. Now, when the parties go one step further and record a memorandum embodying in it what they have agreed to, Article 5(1) of Schedule I-A to the Stamp Act applies. Such a writing would be "an instrument evidencing an agreement relating to the deposit of title deeds...where such deposit.....has been made by way of security for the repayment of money advanced or to be advanced . . . . " If the parties go one step further and execute a formal document, then it becomes a mortgage deed within the meaning of Article 33 of Schedule I-A of the Act. In other words, there are 3 stages becoming progressively more formal. The document referred to in this case occupies an intermediate stage, that is to say, it falls under Article 5 of the Schedule, It will not come under Article 33. As the matter appears to be reasonably clear, the Government do not consider it necessary to consult the Advocate-General.

(By Order of His Excellency the Governor) x x x

To the Board of Revenue with records as per list returned. Sec. to Government.

LIST OF RECORDS: 1.B.P.MIS.197, dated 14-2-1947.
2.Fort St. George Gazette (1904)
3.B.P.Rt.4252, dated 9-9-1944.
4.B.P.Mis.853,dated 22-7-1943.

/True copy/

Office Assistant,
Madras Record Office.

PSR. 21-12-53.

20/1/54

Copy of Board's Ref.No.L.4039/47-3, dated 23-1-1948.

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Sub: Stamp Act - Agreement relating to deposit of title-deeds with intent to create security whether to be charged under Article 5 (1) or under article 33(b) of Schedule I-A of the Act - Instructions - Solicited.

Read: From the Collector of Madras L.Dis.7363/47-dt.6-9-1947.

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REFERENCE:

Submitted to the Government.

2. The Board in a similar case decided in its B-P.Misc. 197 dated 14-2-47 (submitted in original) that Article 33 (b) of Sehedule 1A and not Article 5(1) Schedule IA of the stamp Act has to be applied to such documents for purposes of assessing the stamp-duty. The Board's reasons were that Article 5(1) of the Act is applicable to documents which relate to mere deposit of title-deeds and the persons who receive the title-deeds cannot proceed against the properties covered by the title-deeds in case of default on the part of the borrower and that where a security is also created in the properties covered by the title-deeds the case is one of "mortgage" falling under Article 33(b) of Schedule I-A, as in case of default of the creditor can proceed against the properties covered by the title-deeds.

3. TheDistrict Registrar, Madras - Chingleput in his letter cited above observes that Article 5 (1) of Schedule IA of the Stamp Act is a special provision and that Article 33 (b) is a general one and that where a document comes under both the genera and the special provision the latter has to be adopted for purposes of assessing the stamp-duty. The District Registrar is also of the opinion that article 5 (1) of the Act creates a security by itself irrespective of the fact whether that intention to create security is stated in the document or not and that the persons receiving the title-deeds can always proceed against the properties covered by the title-deeds in the case of default on the part of the borrower. He considers that the interpretation of the Board in its B-P.Mis.197 dated 14-2-47 requires revision.

4. The Board has again examined the matter in detail. Article 6 of Schedule I of the Stamp Act (corresponding to Article 5 of Section IA) was introduced by the Stamp Amendment Act XV of 1904. The Board has looked into the statement of objects and reasons and the report of the Select Committee relating to the Amending Act in question. Attention is invited to P.374 of Part III of the Fort St.George Gazette dated 1-11-1904 submitted in original. The Select committee has observed that Article 6 of the Act applies to all transactions by which moveable propert, is simply appropriated by way of security for the discharge of a debt or engagements with out parting with its possession as for example, bills of sale of stock in trade. The Board considers that perhaps the intention of the legislature was to give a special concession to the banks who execute these kinds of documents in countless number in the course of their transactions and not to collect from them higher stamp-duty under Article 33(b) of section IA of the Act. In this connection attention is also invited to G.O.Ms.No.2580 (Revenue) dated 7-11-47 communicating the Advocate-Generals opinion No.54 dated 4-10-47. He has opined that "a pledge is a bailment covered by the contract Act; and the normal incidents of a pledge are that possession is delivered to the pledgee the bailment is by way of security for the debt and the pledgees can exercise various rights in respect of the pledged article in case of default of which the power of sale is one."

5. The Advocate-General's opinion referred to above relates to marketable securities. The question raised in this reference relates to "title-deeds". The Board has all along held that there is a distinction, between mere deposit of

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